



#10
1647 DmT
325g

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of:

John E. Sims, Dirk E. Smith and Teresa L. Born

Docket No.: 2008-US

Serial No.: 09/876,790

Group Art Unit: 1647

Filing Date: June 6, 2001

Examiner: F. Hamud

For: IL-1 ZETA, IL-1 ZETA SPLICE VARIANTS AND XREC2
DNAS AND POLYPEPTIDES

RECEIVED

MAR 21 2003

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
Washington, D.C.

TECH CENTER 1600/2900

Sir:

In response to an Office Action having a mailing date of February 20, 2003, in which the Examiner, alleging lack of unity in the present invention, restricted the invention into groups I through VI and required Applicants to elect one of the inventions set forth by the Examiner, Applicants respectfully traverse the restriction requirement, and provisionally elects the invention of Group I, drawn to isolated nucleic acids comprising specific nucleotide sequences, vectors comprising said nucleic acids, host cells comprising said vectors, and methods of producing the encoded polypeptides.

Applicants refer to the ADMINISTRATIVE INSTRUCTIONS UNDER THE PCT of the MPEP (August 2001), wherein the requirements for unity of invention are discussed. Specifically, in Example 17, bridging pages AI 60 and AI 61, it is stated that a protein and a DNA sequence encoding it exhibit corresponding technical features, and that unity between claims to such proteins and DNAs is accepted. Accordingly, the polypeptides and the polynucleotides encoding them (i.e., the nucleic acids and methods of producing polypeptides of Group I, and the polypeptides of Group II) exhibit corresponding technical features and unity between them is accepted. Moreover, the inventive polypeptides and antibodies that bind thereto (i.e., Groups II and III) also exhibit corresponding technical features. Applicants request that the allegation of lack of unity and the ensuing restriction requirement be withdrawn.

In the Office Action, the Examiner states that certain claims in Groups I-II are improper Markush claims because the multiple elements recited therein allegedly do not share a common structural property or a common technical feature not found in the prior art; Applicants respectfully disagrees. With respect to the inventive polypeptides of SEQ ID NOs:3, 8, 9, and 10, as shown in Appendix A (**Multiple Alignment of the amino acid sequences of SEQ ID NOs:3, 8, 9 and 10**) attached hereto, the peptides are identical in the region from amino acid 89 to amino acid 218 of SEQ ID NO:3 (identity is indicated by an asterisk). The nucleic acids encoding these polypeptides are likewise related and share a common structural property or common technical

feature. Accordingly, the claimed nucleic acids and polypeptides share a common structural property or a common technical feature not found in the prior art, and the claims are proper Markush claims.

In view of the provisional election and traverse, Applicants request favorable consideration of the restriction requirement and speedy allowance of the claims. The Examiner is invited to contact the undersigned via telephone, to address questions or otherwise facilitate prosecution of the application.

Respectfully submitted,



Patricia Anne Perkins
Registration No. 34,693
Direct dial: (206) 265-4782

Immunex Corporation
Law Department
51 University Street
Seattle, WA 98101
Telephone (206) 587-0430

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231, on the date indicated below.

Date: March 14, 2003

Signed: Elizabeth M. McCarthy
Elizabeth M. McCarthy

.APPENDIX A

!!AA_MULTIPLE_ALIGNMENT 1.0
PileUp of: @/tmp/GCGRMIServer/199.238.129.56-
1046998075313.pileup/pileup.list

Symbol comparison table: GenRunData:blosum62.cmp CompCheck: 1102

GapWeight: 8
GapLengthWeight: 2

stdout MSF: 218 Type: P March 6, 2003 16:47 Check: 9799 ..

Name: SEQ ID NO:3	Len: 218	Check: 3840	Weight: 1.00
Name: SEQ ID NO:8	Len: 218	Check: 7928	Weight: 1.00
Name: SEQ ID NO:9	Len: 218	Check: 7461	Weight: 1.00
Name: SEQ ID NO:10	Len: 218	Check: 570	Weight: 1.00

```

      1                               50
SEQ ID NO:3 MSFVGENSEGV KMGSEDWEKD EPQCCLEDPA VSPLEPGPSL PTMNFVHTSP
SEQ ID NO:8 MSFVGENSEGV KMGSEDWEKD EPQCCLE... ..GP
SEQ ID NO:9 MSFVGENSEGV KMGSEDWEKD EPQCCLE... ..
SEQ ID NO:10 ~~~~~~ ~~~~~~ ~~~~~~MSGC DRRETETKGK NSFKKRLRGP
```

```

      51                               100
SEQ ID NO:3 KVKNLNPKKF SIHDQDHKVL VLDSGNLIAV PDKNYIRPEI FFALASSLSS
SEQ ID NO:8 KVKNLNPKKF SIHDQDHKVL VLDSGNLIAV PDKNYIRP
SEQ ID NO:9 .....
SEQ ID NO:10 KVKNLNPKKF SIHDQDHKVL VLDSGNLIAV PDKNYIRP
                                     \** *****
```

```

     101                               150
SEQ ID NO:3 ASAEKGSPIL LGVSKGEFCL YCDKDKGQSH PSLQLKKEKL MKLAAQKESA
SEQ ID NO:8
SEQ ID NO:9
SEQ ID NO:10
          *****
```

```

     151                               200
SEQ ID NO:3 RRPFIYRAQ VGSWNMLESA AHPGWFICTS CNCNEPVGVT DKFENRKHIE
SEQ ID NO:8
SEQ ID NO:9
SEQ ID NO:10
          *****
```

```

     201                               218
SEQ ID NO:3 FSFQPVCKAE MSPSEVSD
SEQ ID NO:8
SEQ ID NO:9
SEQ ID NO:10
          *****
```